

STATE OF MICHIGAN
COURT OF APPEALS

NEW PAR,

Petitioner-Appellant,

V

CITY OF SOUTHFIELD,

Respondent-Appellee.

UNPUBLISHED

June 3, 2004

No. 245294

Tax Tribunal

LC No. 00-293274

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Petitioner appeals as of right from a tax tribunal order dismissing its petition for lack of jurisdiction pursuant to MCL 205.735(1). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner contends that the tribunal's ruling should be reversed because a protest to the board of review would have been futile. Petitioner did not raise this issue below and thus it has not been preserved for appeal. *Town & Country Dodge, Inc v Dep't of Treasury*, 420 Mich 226, 228 n 1; 362 NW2d 618 (1984). Therefore, petitioner must show plain error affecting its substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

An assessment dispute as to the valuation of property must be protested before the local board of review before the tax tribunal can acquire jurisdiction. MCL 205.735(1); *Covert Twp v Consumers Power Co*, 217 Mich App 352, 355; 551 NW2d 464 (1996). However, if it is clear that a protest before the board of review would be "an exercise in futility" and nothing more than a formality, exhaustion of administrative remedies is not required. *Turner v Lansing Twp*, 108 Mich App 103, 108; 310 NW2d 287 (1981). A case of futility is made out where, for example, the board of review has already rejected a protest to the assessment of the same property, *Ass'n of Little Friends, Inc v Escanaba*, 138 Mich App 302, 311; 360 NW2d 602 (1984), or where the board was not legally empowered to consider the protest. *Manor House Apts v City of Warren*, 204 Mich App 603, 605-606; 516 NW2d 530 (1994).

Neither situation is present here. The local board had authority to consider the protest. Petitioner, who had not previously protested the assessment of the subject property, intended to include the subject property in a protest involving several other properties but neglected to do so. Because it could not prove that it had protested the assessment to the board as alleged in its petition, the tribunal properly dismissed the petition for lack of jurisdiction.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter